

IP 05-0550-C T/K Barbee v L. Fish Furniture
Magistrate Tim A. Baker

Signed on 05/04/2006

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHANDRA J. BARBEE,)	
)	
Plaintiff,)	
vs.)	NO. 1:05-cv-00550-JDT-TAB
)	
L. FISH FURNITURE COMPANY,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHANDRA J. BARBEE,)	
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Plaintiff,)	
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vs.)	1:05-cv-0550-JDT-TAB
)	
L. FISH FURNITURE COMPANY,)	
)	
Defendant.)	

ORDER ON PETITION FOR LEAVE TO WITHDRAW¹

I. Introduction.

Plaintiff's counsel, Kenneth E. Lauter and the law firm Haskin Lauter LaRue & Gibbons, want out of this case. But counsel may not withdraw as of right. Local Rule 83.7(b) provides that counsel desiring to withdraw "shall file a petition requesting leave to do so." Lauter did so on March 13, 2006 [Docket No. 38], prompting the Court to schedule a status conference to address this motion. [Docket No. 39.] Plaintiff participated in this conference and stated that she did not want her counsel to withdraw. Despite Plaintiff's expressed desire that her counsel remain in the case, Lauter reiterated his request to withdraw.

It is well settled that the discretion to grant or deny an attorney's motion to withdraw in a case such as this lies with the district court. *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir. 1982). Because Plaintiff objects to her counsel's motion, the Court must

¹ This entry is a matter of public record and will be made available on the Court's web site. However, the Court does not consider the issues addressed in this entry sufficiently novel to justify commercial publication.

determine whether counsel has shown valid and compelling reasons for the withdrawal. *Woodall v. Drake Hotel, Inc.*, 913 F.2d 447, 459 (7th Cir. 1990).

II. Discussion.

The petition for leave to withdraw asserts that “substantial differences” exist between Plaintiff and her counsel such that “continuing representation in this matter would be imprudent and unreasonably difficult.” [Docket No. 38, ¶ 1.] The petition does not elaborate on the purported reasons for withdrawal, stating that counsel has an obligation to the Plaintiff to keep confidential “the specific facts and details that underlie, and would further explain the grounds for, this Motion.” [Docket No. 38, ¶ 2.] The petition states, however, that it is based upon Rules of Professional Conduct 1.16(b)(1), (5), (6), and (7).

The referenced portions of Rule 1.16(b) provide:

Except as stated in paragraph (c),² a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) other good cause for withdrawal exists.

In examining these provisions, it is noteworthy that the referenced provisions provide

²Rule 1.16(c) provides, “A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”

that the lawyer “may” withdraw under such circumstances. In contrast, Rule 1.16(a) discusses circumstances under which a lawyer “shall” withdraw. As the comments to Rule 1.16 make clear, withdrawal is mandatory in certain circumstances (i.e., where the client demands that the lawyer violate the Rules of Professional Conduct or other law) and optional in other circumstances. Since withdrawal is not required under the referenced provisions, the issue is whether optional withdrawal should be permitted.

Rule 16.1(b)(1) permits withdrawal if it can be accomplished without material adverse effect on the interests of the client. The docket reveals that Lauter filed suit on Plaintiff’s behalf on April 15, 2005 following exhaustion of administrative procedures and asserting a combination of claims under the Americans with Disabilities Act and Indiana common law. [Docket No. 1.] Lauter and his firm have represented Plaintiff throughout this litigation, engaged in discovery, and appeared in Court proceedings. The Case Management Plan (“CMP”) reflects that the Defendant intends to seek summary judgment on various grounds. The summary judgment deadline has been continued once, was reset to May 1, 2006, and then temporarily stayed (along with all other case deadlines) pending resolution of the petition to withdraw. [Docket No. 41.] Allowing Plaintiff’s counsel to withdraw at this juncture would put the Plaintiff in the difficult situation of unexpectedly having to stave off an imminent summary judgment motion without the benefit of counsel who has represented her throughout this matter.³ Thus, the Court is not convinced that permitting withdrawal can be accomplished without material adverse effect on the interests of the client.

³Plaintiff advised the Court at the recent conference that she does not know if she will be able to find another lawyer. The Court shares Plaintiff’s concern that she would not be able to find replacement counsel at this stage in the proceedings.

Rule 1.16(b)(6) permits withdrawal if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. There does not appear to be anything about this employment discrimination case that will result in any unusual financial burden, such as a slew of necessary depositions and the need for several expert witnesses. Moreover, Lauter and his law firm probably prosecute more employment discrimination cases than any other plaintiffs' firm in Indiana. Haskin Lauter LaRue & Gibbons has several partners and associates, who regularly appear before the undersigned. Keeping counsel in this case could not possibly result in an unreasonable financial burden on Lauter or his firm.⁴ See *Fidelity Nat'l Title Ins. Co. of N.Y. v. Intercounty Nat'l. Title Ins. Co.*, 310 F.3d 537, 540 (7th Cir. 2002) (court considered limited size of firm, among other things, before determining that Rule 1.16(b) permitted withdrawal).

Rule 1.16(b)(7) permits withdrawal where other good cause for withdrawal exists. But the petition does not suggest other good cause that would trigger this catch-all provision. Lauter does not, for example, represent to the Court that there is an irreconcilable breakdown in the attorney-client relationship or that continued representation will run afoul of his ethical obligations as an attorney. See *A Sealed Case*, 890 F.2d 15, 18 (7th Cir. 1989) ("... the lawyer may withdraw from the representation of a civil litigant in order not to participate in the presentation of a false picture to the tribunal."). Thus, Rule 1.16(b)(7) provides no basis for withdrawal.

This leaves Rule 1.16(b)(5). Under this provision, withdrawal is permitted if the client

⁴As noted, Rule 1.16(b)(6) also permits withdrawal if the representation has been rendered unreasonably difficult by the client, but there is no indication that this circumstance is at issue.

fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. *See Fidelity Nat'l Title Ins. Co. of N.Y.*, 310 F.3d at 540 ("Failure to cover \$470,000 in legal fees and expenses. . . , and the prospect of a further uncompensated outlay worth \$500,000 satisfies" subsections (5) and (6) respectively for purposes of permissive withdrawal under Rule 1.16(b)). There is nothing before the Court to suggest that the client has failed to substantially fulfill an obligation to her lawyer. That she may not have paid the entire agreed upon retainer fee is not sufficiently substantial to justify withdrawal here.

Nor is withdrawal justified by the fact that, despite Court-supervised settlement efforts, no settlement has been reached. [Docket No. 31.] Plaintiff's counsel accepted this representation on a contingency fee basis. Such representation, by its nature, involves risks. In exchange for that risk, contingency fee counsel typically stand to receive 33% of any recovery (though some contingency fee agreements demand an even larger percentage, particularly as the case proceeds to trial and, if necessary, on appeal). If the risk was not worth taking, the representation could have been declined. Having accepted the risk inherent in such an agreement, counsel normally will not be permitted to abandon the client, particularly at this advanced stage of the litigation, even if the client has failed to pay the entire retainer.

III. Conclusion.

For the reasons specified above, the petition for leave to withdraw [Docket No. 38] is denied. Counsel shall submit a revised CMP within 10 days of this order.

Dated:

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